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**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA**

ROHNERT PARK CITIZENS TO
ENFORCE CEQA, and DOES 1 through 5,
inclusive,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION, UNITED STATES
DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION,
and DOES 6 through 10, inclusive,

Defendants.

CASE NUMBER C 07-04607 TEH

**JOINT CASE MANAGEMENT
STATEMENT BETWEEN PLAINTIFF
AND FEDERAL DEFENDANTS
UNITED STATES DEPARTMENT OF
TRANSPORTATION AND FEDERAL
HIGHWAY ADMINISTRATION**

Date: December 10, 2007

Time: 1:30 p.m.

Ctrm: 12, 19th Fl, SF

1 Plaintiff and Defendants United States Department of Transportation and
2 Federal Highway Administration ("Federal Defendant") submit this joint Case
3 Management Statement pursuant to the Order Setting Initial Case Management
4 Conference and ADR Deadlines, and the Standing Order re Contents of Joint Case
5 Management Statement.

7 **1. Jurisdiction and Service:** Plaintiff contends that this Court has
8 jurisdiction pursuant to 28 U.S.C. § 1331 and 1361. This Court has pendent
9 jurisdiction over the state California Environmental Quality Act (CEQA) and Public
10 Records Act (PRA) claims joined with the federal NEPA claim. Venue is
11 appropriate in the Northern District of California under 28 U.S.C. § 1391(e).

14 The Federal Defendant states that this Court has jurisdiction pursuant to 28
15 U.S.C. § 1331, but does not agree that it has jurisdiction under 28 U.S.C. § 1361.
16 Further, the Office of the U.S. Attorney, Northern District of California and Federal
17 Defendant have been served with process.

19 Plaintiff states that it obtained and filed an executed waiver of service from
20 Defendant California Department of Transportation (Caltrans). The due date for
21 Caltrans' response to the complaint is January 13, 2008.

22 **2. Facts:** Federal Defendant and the California Department of
23 Transportation (CalTrans) proposed building the Wilfred Avenue Interchange
24 Project in Rohnert Park, Sonoma County, California (the Project). The Project
25 proposes to modify the interchange to connect Wilfred Avenue to Golf Course Drive
26 by an under-crossing and to widen and realign U.S. Route 101 for HOV lanes
27

1 from Rohnert Park Expressway Overcrossing to the Santa Rosa Avenue Over-
2 crossing.

3
4 Federal Defendant and Caltrans prepared and released a joint Negative
5 Declaration/Initial Study (CEQA) Environmental Assessment, followed by a
6 Finding of No Significant Impact ("FONSI").

7
8 Plaintiff contends that the environmental documents do not discuss the
9 environmental impacts of a casino proposed in the vicinity of the Project.

10 Also, Plaintiff further contends that Caltrans failed to produce all non-
11 privileged documents in response to plaintiff's California Public Records Act (PRA)
12 request.

13
14 **3. Legal Issues:**

15 Plaintiff contends that the legal issues are (1) whether an Environmental
16 Impact Statement ("EIS") is required for the Project pursuant to the National
17 Environmental Policy Act ("NEPA"), (2) whether recirculation of the negative
18 declaration is required pursuant to section 15088.5 of the CEQA Guidelines (14
19 Cal. Code Regs.); and/or (3) whether subsequent or supplemental environmental
20 review is required pursuant to section 15162 or section 15163 of the Guidelines;
21 and (4) whether Caltrans violated the PRA by law by improperly and without
22 justification withholding certain non-exempt and non-privileged public records from
23 plaintiff and plaintiff's members and representatives.

24
25
26 The Federal Defendant contends that the legal issue is whether the
27 preparation of an Environmental Impact Statement ("EIS") is required for the
28

1 Project, pursuant to the National Environmental Policy Act ("NEPA").

2 **4. Motions:** Plaintiff does not anticipate making any motions in this case
3
4 other than, perhaps, a motion for summary judgment or, alternatively, an opening
5 brief on the merits. Plaintiff's counsel has been informed that Caltrans anticipates
6 bringing a Rule 12 motion.

7 The Federal Defendant states that the parties should stipulate to a
8
9 proposed schedule for briefing and hearing of cross-motions for summary
10 judgment and ask the Court to enter an order adopting that schedule.

11 **5. Amendment of Pleadings:** Plaintiff does not anticipate amending the
12
13 complaint.

14 **6. Evidence Preservation:** Plaintiff contends that this is a mandamus case
15 tried on the administrative record. Plaintiff elected to prepare the record under
16 CEQA relative to the state law claim and can begin to do so with the documents
17 received pursuant to its PRA request. Such record preparation should be
18 coordinated with Federal Defendant so that duplication does not occur.
19

20 Federal Defendant states that all known documents related to the
21 administrative record have been preserved and will be made available when the
22 administrative record is prepared and produced. (Moved, only.)
23

24 **7. Disclosures:** This is an action for review of an administrative record and
25 exempt from the rule for initial disclosures, pursuant to Rule 26(a)(1)(E),
26 Fed.R.Civ.P.
27
28

1 **8. Discovery:** Discovery is neither necessary nor appropriate in this action
2 for review of an administrative record.

3
4 **9. Class Actions:** This case is not a class action.

5 **10. Related Cases:** None.

6 **11. Relief:** Plaintiff requests (1) a Peremptory Writ of Mandate ordering
7 defendants to set aside their respective actions and any approvals in furtherance
8 of the project and to comply with NEPA, the APA, CEQA, the PRA, and other
9 applicable laws prior to further consideration the project; (2) declaratory relief
10 against the DOT and the FHWA establishing that the FHWA must recirculate or
11 prepare an EIS or a supplement to the FONSI pursuant to NEPA and the APA; (3)
12 upon necessity and the filing of a request, that Court issue a temporary stay of
13 the administrative approvals and/or a temporary restraining order and
14 preliminary injunction; (4) a permanent injunction enjoining defendants from
15 engaging in any activity connected with the approvals or the project unless and
16 until this Court finds that the approvals are in full compliance with NEPA, the APA,
17 CEQA, the PRA, and all other applicable laws; and (5) costs of suit and attorney's
18 fees herein pursuant to section 1021.5 of the California Code of Civil Procedure
19 and/or the Equal Access to Justice Act, 28 U.S.C. §§ 2412(b), (d), and/or section
20 6259(d) of the California Government Code or pursuant to any other applicable
21 law.
22
23
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25

26 Federal Defendant requests a judgment of dismissal and an award of costs.
27
28

1 **12. Settlement and ADR:** The state defendant and plaintiff are required to
 2 hold a settlement meeting under CEQA within 45 days of service of the complaint,
 3 i.e., December 29, 2007. Plaintiff proposes that Federal Defendant participate in
 4 that meeting. Federal Defendant does not know if settlement is possible but is not
 5 opposed to preliminary, exploratory settlement or ADR discussions.

7 **13. Consent to Magistrate Judge For All Purposes:** Plaintiff consents to
 8 have a magistrate judge conduct all further proceedings including trial and entry of
 9 judgment.
 10

11 The United States respectfully declines to consent to magistrate judge for
 12 further proceedings.

13 **14. Other References:** This case is not suitable for reference to binding
 14 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
 15

16 **15. Narrowing of Issues:** The issues are not amenable to being narrowed
 17 by agreement or by motion. The evidence will be presented in the form of the
 18 administrative record contained in volumes, indexed, and paginated.
 19

20 **16. Expedited Schedule:** Plaintiff contends that this case can be handled
 21 on an expedited basis with streamlined procedures. Plaintiff proposes the
 22 following schedule:
 23

24	1/16	exchange of indices of proposed record documents
	1/23	copy of proposed record documents to Caltrans
25	1/30	exchange of comments on proposed record
	2/6	agencies' certification and lodgment of record
26	3/5	opening brief
	4/2	opposition briefs
27	4/23	reply briefs

1
2 Federal Defendant suggests that the parties enter into a stipulation and ask
3 the Court to sign an order which sets a schedule for briefing and hearing of cross-
4 motions for summary judgment, as follows:

- 5 - Date for Plaintiff's motion for summary judgment
- 6
- 7 - Date for Federal Defendant's memorandum in opposition to Plaintiff's
- 8 motion for summary judgment and Federal Defendant's motion for summary
- 9 judgment.
- 10 - Date for Plaintiff's reply memorandum in support of its summary
- 11 judgement motion and memorandum in opposition to Federal Defendant's
- 12 motion for summary judgment.
- 13 - Date for Federal Defendant's reply memorandum in support of its motion.
- 14 - Date for Court's hearing on cross-motions for summary judgment.

14 **17. Scheduling:** See item 16. Federal Defendant state that its proposed
15 schedule for briefing cross motions for summary judgment should not commence
16 until after its Administrative Record and the Administrative Record under CEQA
17 have been prepared and made available to all parties. Federal Defendant
18 estimates that its own Administrative Record will be completed and available not
19 later than February 15, 2008.
20

21 **18. Trial:** Trial is inappropriate and unnecessary in this record review case.
22
23 The case should be handled on the briefs or motions for summary judgment
24 based upon an agreed-upon schedule by the parties and the Court.
25 Plaintiff states that the hearing before the Court, whether on briefs or summary
26 judgment, is expected to last 2 hours or less.
27

19. Disclosure of Non-party Interested Entities or Persons: The parties have not filed the “Certification of Interested Entities or Persons.” Plaintiff here certifies that it knows of no persons, firms, partnerships, corporations (including parent corporations) or other entities to have either: (I) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

Federal Defendant knows no such entities or persons.

20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter. Plaintiff refers the Court to item 16 above.

Federal Defendant knows of no such matters.

Dated: December 4, 2007

Law Office of Rose M. Zoia

_____/s/_____
Rose M. Zoia, counsel for Plaintiff Rohnert
Park Citizens to Enforce CEQA

SCOTT N. SCHOOLS
United States Attorney

/s/ _____
CHARLES M. O'CONNOR
Assistant U.S. Attorney
Counsel for Defendants United States
Department of Transportation and Federal
Highway Administration